Chapter 3

Socioeconomic and Environmental Programs

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## Chapter 3

## Socioeconomic and Environmental Programs

### Overview

### Introduction

This chapter describes socioeconomic and environmental programs established by State law and further defined by regulations and policies to increase business opportunities for small and disabled veteran businesses and those businesses operating in economically distressed areas of the State. Also included in this chapter are the State requirements for promoting the purchase of products that are energy efficient and have other preferable environmental attributes.

Most of the purchasing authority categories provide a means of claiming contracting dollars toward compliance with the socioeconomic and environmental programs goals. This chapter provides an overview of each program, identifying the program requirements and describing the application of applicable price preference evaluation adjustments in competitive solicitations during the evaluation process. It also provides examples of the various preferences and incentives for the socioeconomic and environmental programs. However, if departments need assistance with the application of the preferences and/or incentives for IT goods and services, contact the DGS/PD at [PPO@dgs.ca.gov](mailto:PPO@dgs.ca.gov).

An overview of the Americans with Disabilities Act (ADA) policy is also included within this chapter to explain the importance of making all procurement activities available to all persons, including persons with disabilities, and where to go for assistance.

## Topic 1- Americans with Disabilities Act (ADA)

### 3.1.0 Americans with Disabilities Act (ADA)

In compliance with the provisions of the ADA (Americans with Disabilities Act of 1990, Title II Subpart A) and State policy, every effort must be made to ensure activities and services are available to all persons, including persons with disabilities.

### 3.1.1 Provide reasonable accommodation

Reasonable accommodation must be made to those persons with disabilities that have special needs requiring accommodation in order to participate in the procurement process. Preparation should be made in advance to ensure those persons having questions about reasonable accommodation are provided with accurate responses.

Departments should have an ADA Coordinator who is available to assist buyers in responding to questions or concerns regarding reasonable accommodation as it impacts the procurement process.

### 3.1.2 The DGS/PD assistance available

The DGS/PD is available to assist departments with reasonable accommodation requests relative to participating in a procurement process. The DGS/PD can be contacted at (916) 375-4400 (main office) for assistance.

Departments need to provide the DGS/PD a minimum of 10 working days before a scheduled event (i.e., meeting, conference, workshop) or competitive bid deadline due date to ensure a request can be accommodated.

### 3.1.3 Contact numbers for TTY/TDD and California relay service

The DGS/PD TTY/TDD (telephone device for the deaf) and California Relay Service numbers are listed below:

* TTY/TDD telephone number is (916) 376-1891
* California Relay Service telephone numbers are:
* Voice:1-800-735-2922
* TTY/TDD: 1-800-735-2929

## Topic 2 – Small Business and Disabled Veteran Business Enterprise Contracting Opportunities

### 3.2.0 Opportunity

Pursuant to the Small Business Procurement and Contract Act (Government Code [GC] sections 14835 through 14843) and Military and Veterans Code (M&VC) section 999 et seq, procurement opportunities must be offered to California (CA) certified small businesses (SB), micro businesses (MB), and disabled veteran business enterprises (DVBE) whenever possible. Hereafter, unless otherwise directed, any reference to certified SB also includes certified MB as defined by the above referenced GC.

Consequently, departments should make every effort to seek out and include certified SB and DVBE when conducting any procurement.

### 3.2.1 Annual statewide participation goals

Pursuant to Executive Order S-02-06 M&VC 999.2, each department shall have an annual statewide participation goal in State procurement and contracting of not less than 25 percent (25%) for SB participation and not less than three percent (3%) for DVBE participation.

These goals were established to enhance and encourage competition by creating an optimum environment that affords all businesses equal access to State procurement and contracting opportunities. Departments unable to meet the required participation goal(s) are required to submit an Improvement Plan with annual reporting(s). Refer to Chapter 12, Reporting Requirements.

### 3.2.2 SB/DVBE Advocate

In accordance with GC section 14846, and M&VC section 999.12, departments whose annual purchasing activities exceed $100,000 (regardless of purchasing type(s) or categories) shall designate a SB/DVBE advocate whose duties include but are not limited to:

* Identify potential SB and/or DVBE prime contractors or subcontractors and potential contracting opportunities.
* Make information regarding pending solicitations available to and consider offers from certified SB and/or DVBE firms capable of meeting the State’s business need.
* Ensure that payments due on purchase documents with SB suppliers are promptly made as provided by GC section 927 et seq.

Click here to access the [SB and DVBE Advocate Directory](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Office-of-Small-Business-and-Disabled-Veteran-Business-Enterprise/Outreach-Program/SB-DVBE-Advocate-Program).

### 3.2.3 Available acquisition approaches to achieve goals

All acquisition approaches can be used to achieve participation goals. Examples include competitive solicitations, such as the SB/DVBE Option and use of existing sources such as leveraged procurement agreements (LPAs).

Refer to Chapter 6, Leveraged Procurement Agreements (LPA), for information on the process of claiming SB and DVBE contracting dollars under an LPA purchasing category.

### 3.2.4 SB/DVBE option

GC section 14838.5 (a) and (b) enables a department to conduct a competitive solicitation valued at $5,000.01 through $249,999.99 that targets only certified SB, including micro businesses, or certified DVBEs.

Refer to Chapter 4, Competition Solicitations, for detailed information regarding the SB/DVBE Option process.

**Note**: Buyers conducting a competitive solicitation utilizing the SB/DVBE Option need to verify if there are mandated or sourced contracts associated to the product or services.

### 3.2.5 Verify certification status

Solicitations (including verbal or written requests for offers), consideration of bids, or award of contracts shall not be provided to any firm that has been suspended from State procurement and contracting as listed on the DGS/PD web page. California SB and DVBE certification status shall be verified before a contract award regardless of the acquisition approach. This verification can be obtained by accessing the SB and DVBE Services certified firm inquiry database located on the DGS/PD web page.

Click here to verify the certification status of [SB and DVBE Services](https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx).

Click here to access list of [suspended firms](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/SB-DVBE-Program-Violations-and-Sanctions#@ViewBag.JumpTo).

### 3.2.6 Authority for Commercially Useful Function

In accordance with GC section 14837 and M&VC section 999, all SB and DVBE contractors, subcontractors and suppliers that bid on or participate in a State contract, regardless of being a verbal or written solicitation and/or paid for using the CAL-Card as a payment method, must perform a Commercially Useful Function (CUF). In addition, the requirement to determine CUF is not affected by the applicability of the five percent (5%) SB preference and/or the DVBE participation goal or DVBE incentive. There is no exception to this requirement; consequently, certified SB, MB and DVBEs must perform a CUF. CUF must be determined prior to contract award.

Click here to access the [DVBE and SB Program Violations and Sanctions web page](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/SB-DVBE-Program-Violations-and-Sanctions).

**Note**: Refer to Chapter 9 for CAL-Card requirements.

### 3.2.7 Definition of CUF

A business performing a CUF is one where the contract administrator determines that the business does all of the following:

* Is responsible for a distinct element of the work of the contract
* Carries out its obligation by actually performing, managing or supervising the work involved
* Performs work that is normal for its business, services and functions
* Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment.
* Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices

A contractor, subcontractor, or supplier will not be considered to perform a CUF if the role of the contractor or supplier is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SB, MB, or DVBE participation. After award, the contract administrator must monitor compliance with CUF for the duration of the contract.

### 3.2.8 CUF compliance

Failure of a certified SB, MB, or DVBE to demonstrate performance of a CUF, when bidding as a prime contractor, will result in that certified bidder being eliminated from consideration. When analysis discloses that a certified subcontractor/supplier is not providing a CUF, a contract may still be awarded if the prime contractor is a responsible bidder without the involvement of the firm that has been determined not to provide a CUF and/or the work can be performed by an alternate SB, MB, or DVBE firm where the substitution is determined to have no material effect on the bid.

With respect to possible sanctions or decertification where it is determined that fraud or misrepresentation has occurred, information provided by bidders to demonstrate compliance with the CUF requirement is required under M&VC section 999.9 and GC section 14842 . Awarding departments are reminded of their responsibilities under these sections, particularly with respect to receipt of complaints, investigations, and reporting responsibility to the DGS/PD’s Office of Small Business and DVBE Services (OSDS).

Click here to access the [DVBE and SB Program Violations and Sanctions web page](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/SB-DVBE-Program-Violations-and-Sanctions).

### 3.2.9 Reporting requirements

Refer Chapter 12 for SB and DVBE participation reporting requirements.

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### 3.2.10 Contact the DGS/PD’s OSDS

Click here to access the [SB and DVBE Services web page](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Office-of-Small-Business-and-Disabled-Veteran-Business-Enterprise/Certification-Program).

## Topic 3 – Disabled Veteran Business Enterprise Participation Program Requirements

### 3.3.0 Authority

The Disabled Veteran Business Enterprise (DVBE) participation program for all State contracts is established in PCC section 10115 et seq., M&VC, section 999 et seq., and CCR, Title 2, section 1896.60 et seq. Compliance with DVBE requirements is required for all State entities.

This section provides information about the State’s DVBE program to ensure that certified DVBEs are afforded opportunities to compete for State contracts, requirements and application of incentives.

### 3.3.1 Exemptions to the DVBE Participation Program Requirement

**1. Policy**

When a statutory exemption does not exist, pursuant to California Code of Regulations (CCR) Section 1896.70, state departments “…may exempt a solicitation from DVBE participation. Determining factors for such exemption include, but are not limited to:

(1) Few or no DVBE subcontracting opportunities.

(2) Subcontracting the work is not normal for the industry.

(3) Work is so specialized that few or no DVBEs can [self] perform it.

(4) Procurement pursuant to Government Code §§ 14838.5(a) or 14838.7(a).”

**2**. **Procedure**

When exempting the DVBE Participation Program Requirement for a specific solicitation pursuant to CCR 1896.70, state departments must:

1. Designate individuals that are authorized to complete, approve, and sign the DVBE Exemption Request form (STD 816) in the “Department designee completing the Std. 816” and “Highest ranking executive or designee” signature blocks. These designations must be identified in the state department’s internal procurement policy and procedure manual.
2. Confirm that an exemption will not prevent achievement of the state department’s annual three percent (3%) DVBE participation goal prior to completing each individual exemption.
3. Complete the DVBE Exemption Request form ([STD 816](https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std816.pdf)) and obtain approvals from the “Department designee completing the STD 816” and from the state department’s “Highest ranking executive or designee” in order to exempt a specific solicitation from the DVBE Participation Program Requirement.
4. Obtain approvals on the DVBE Exemption Request form (STD 816) prior to releasing a solicitation and/or soliciting offers.
5. Retain a copy of the approved DVBE Exemption Request form ([STD 816](https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std816.pdf)) in the procurement file.
6. Attach or include the approved DVBE Exemption Request form (STD 816) to requests for DGS/Procurement Division (PD) services, including but not limited to, requests for PD to conduct acquisitions on behalf of state departments and transaction based increase requests for purchasing authority.
7. Use the electronic signature feature available in the DVBE Exemption Request [STD 816](https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std816.pdf).

When exempting the DVBE Participation Program Requirement for an individual solicitation pursuant to a specific statutory exemption, the above procedures apply with the following exception to item (c):

Complete the DVBE Exemption Request form (STD 816) in sufficient detail to identify the statutory exemption in the “Exemption Justification” section of the form and obtain approval by the “Department designee completing the Std. 816”; approval by the “Highest ranking executive or designee” is not required.

**3. Legal Reference**

California Code of Regulations (CCR) Section 1896.70

**4. Related Policy, Procedures, & Resources**

Broadcast Bulletin P-08-20

**5. Attachments**

DVBE Exemption Request form ([STD 816](https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std816.pdf))

### 3.3.2 Competitive Solicitation and the DVBE Participation Program Requirement

Departments must develop DVBE solicitation language to include in their competitive solicitations that complies with the DVBE participation program.

Unless statutorily exempt, the DVBE participation requirement applies to all contracts regardless of the solicitation format (e.g., RFQ, IFB, RFP) or dollar value. Upon the approval of a department director or designee the requirement may be exempt from a solicitation.

### 3.3.3 Meeting DVBE program requirements

If DVBE participation is a requirement of the competitive solicitation then a bidder must document commitment to full DVBE participation, i.e., locate and commit to using certified DVBE firms who will perform the percent of work specified by the solicitation.

Refer to Topic 2 of this chapter for CUF requirements.

The DGS/PD’s OSDS publishes DVBE Resources on its web site that lists approved DVBE trade and focus papers.

Click here to access the [DVBE Resources](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Office-of-Small-Business-and-Disabled-Veteran-Business-Enterprise/Certification-Program)

### 3.3.4 Meeting DVBE goals

There are two methods of meeting the goals:

1. For non-DVBE bidders: Commit to use DVBEs for not less than the percentage specified in the solicitation, or
2. For DVBE bidders: Commit to perform not less than the percentage specified in the solicitation with its own forces or in combination with other DVBEs.

### 3.3.5 Additional DVBE information

Click here to access the [DGS/PD DVBE Participation web page.](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Small_Business_and_Disabled_Veteran_Business_Enterprise_Best_Practices)

### 3.3.6 Broker/agent status for DVBE

The State must obtain declarations from certified DVBEs as identified below pursuant to M&VC sections 999.2(b) through 999.9. The purpose is to eliminate the benefits of DVBE status from those contractors who are using their certified status and obtaining State funds, but working only as brokers or agents. Therefore, in order to enable the State to verify that a DVBE is not an equipment broker, the DVBE’s Federal Tax Information Number must be reported on the STD. 843.

### 3.3.7 Definition of broker/agency and equipment broker

M&VC Section 999.2(b) provides definitions for the following terms:

* “Broker” or “agent” means any individual or entity, or combination thereof, that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more certified disabled veterans has 51 percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.
* “Equipment broker” means any broker or agent who rents equipment, directly or indirectly, to an awarding department.

### 3.3.8 Impacted DVBEs

Declarations are to be obtained using a Disabled Veteran Business Enterprise Declaration (STD. 843) when the State intends to transact business:

* With a certified DVBE prime or
* For equipment rental situations, with either a certified DVBE prime or a prime who is using a certified DVBE subcontractor(s)

This pertains to all types of transactions including competitive and non-competitive situations. It applies both when establishing Leveraged Procurement Agreements (LPAs) and when placing orders against LPAs. In order to enable the State to verify that a DVBE is not an equipment broker, the DVBE’s Federal Tax Information Number must be reported on the STD. 843.

Click here for form [STD. 843, Disabled Veteran Business Enterprise Declaration](http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd_843.pdf)

### 3.3.9 Purchase document submission

When DVBEs are involved as identified above:

* Departments that submit purchase documents for PD review and approval are to provide a copy of the Std. 843(s).
* Purchase documents submitted to PD in conjunction with emergency acquisitions must include a copy of the Std. 843(s)]

### 3.3.10 Declaration information

As long as all other requirements are met (such as Commercially Useful Function), the State can still transact business with a DVBE that is determined to be a broker or agent or who declares that one or more of its DV owners or DV managers does not own at least 51% of the equipment to be rented; however, the DVBE:

* Will not receive the benefit of their certification for the respective transaction (This includes benefit, as applicable, for a DVBE incentive) and
* Participation (attributed to the DVBE that is the broker) will not count towards the awarding department’s annual DVBE participation goal

### 3.3.11 Notify OSDS

Notify the OSDS, Compliance Unit (375-4940), when the completed Std. 843 identifies that:

* A DVBE is a broker or agent (in Section 2 of the form)
* If rental equipment is to be provided, one or more of the DV owners or DV managers of the DVBE does not own at least 51% of the equipment to be rented (in Section 3 of the form)

**Note**: When notifying OSDS, provide a copy of the Std. 843. Also provide your contact information.

### 3.3.12 OSDS role

The OSDS reviews and certifies DVBEs. To support the requirements of M&VC sections 999.2(b) through 999.9, the OSDS requires all DVBEs (both new applicants and those currently certified) to declare their status as a broker or agent, submit the business enterprise’s federal tax returns and – for those who rent equipment to the State – to submit their personal tax returns.

DVBEs who rent equipment to the State and who fail to submit their personal tax returns to OSDS automatically attain broker or agent status and will be considered non-certified for DVBE participation goal purposes.

### 3.3.13 Consequences

Failure of a DVBE to submit business enterprise federal tax returns to OSDS will:

* Prohibit benefit of DVBE certification in any State contract until compliance occurs
* Result in OSDS decertification of the DVBE
* Prohibit the DVBE from participating in State contracts until the business is in compliance
* Negate DVBE annual three percent (3%) participation credit for any funds expended involving the DVBE

### 3.3.14 DVBE responsibility

The law requires that a DVBE that fails to maintain certification requirements shall immediately notify departments with current contracts, and the administering department, of the situation. The notification shall identify the particular certification requirement that has not been maintained (M&VC §999.2(h)).

## Topic 4 – DVBE Incentive and Competitive Solicitations

### 3.4.0 Authority

M&VC section 999.5 et seq. authorized the DGS to establish a DVBE incentive process to enhance participation of DVBEs in state contracting. Furthermore, the DVBE incentive regulationsare located within the California Code of Regulations (CCR), Title 2, Division 2, Chapter 3, Subchapter 10.6, sections 1896.98, 1896.99.100, and 1896.99.120 and available at the following [link](http://ccr.oal.ca.gov/linkedslice/default.asp?SP=CCR-1000&Action=Welcome).

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### 3.4.1 Definition of DVBE incentive

A DVBE incentive is a method that encourages participation of certified DVBEs in solicitations by providing an adjustment of price for awards based on low price or points for awards based on high score. The DVBE incentive is applied during the evaluation process for bids proposing participation of California certified DVBEs. The application of an incentive varies from that of a preference both in when it is incorporated into competitive solicitations and how incentive percentages are determined and calculated. Unlike preferences in which the inclusion is standardized in competitive solicitations and a standard percentage is stipulated, discretion is left to the departments to determine incentive percentages for a particular transaction based upon a business strategy to achieve their annual goal.

### 3.4.2 Opportunity

Departments must offer procurement opportunities to California (CA) certified DVBEs whenever possible. This includes applying the DVBE incentive during the evaluation process of a competitive solicitation that includes the CA DVBE Program Requirements package and where there are bids that propose participation of CA certified DVBEs.

### 3.4.3 Applicability

The DVBE incentive applies to all competitive solicitations regardless of format (e.g., RFQ, IFB, RFP, or phone quotes), delivery method, or dollar threshold whenever the solicitation includes the DVBE Program Requirement. If a solicitation includes the DVBE Program Requirements, buyers will use the DGS provided CA [DVBE Program Requirements](https://www.dgs.ca.gov/-/media/8B524DA41A3E46B3ADBC69D8D7725E02.ashx) whenever conducting competitive solicitations.

### 3.4.4 Exemptions to the DVBE Incentive Requirement

**1. Policy**

When a statutory exemption does not exist, pursuant to California Code of Regulations (CCR) Section 1896.99.100 “The highest ranking executive officer or his/her designee may exempt individual contracts from the DVBE Incentive with a full and complete written justification as long as such exemption does not prevent achievement of a department's DVBE participation goal.”

**2**. **Procedure**

When exempting the DVBE Incentive for a specific solicitation pursuant to CCR 1896.99.100 state departments must:

1. Designate individuals that are authorized to complete, approve, and sign the DVBE Exemption Request form (STD 816) in the “Department designee completing the Std. 816” and the “Highest ranking executive or designee” signature blocks. These designations must be identified in the state department’s internal procurement policy and procedure manual.
2. Confirm that an exemption will not prevent achievement of the state department’s annual three percent (3%) DVBE participation goal prior to completing each individual exemption.
3. Complete the DVBE Exemption Request form ([STD 816](https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std816.pdf)) and obtain approvals from the “Department designee completing the STD 816” and from the state department’s “Highest ranking executive or designee” in order to exempt a specific solicitation from the DVBE Incentive.
4. Obtain approvals on the DVBE Exemption Request form (STD 816) prior to releasing a solicitation and/or soliciting offers.
5. Retain a copy of the approved DVBE Exemption Request form ([STD 816](https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std816.pdf)) in the procurement file.
6. Attach or include the approved DVBE Exemption Request form (STD 816) to requests for DGS/Procurement Division (PD) services, including but not limited to, requests for PD to conduct acquisitions on behalf of state departments and transaction based increase requests for purchasing authority.
7. Use the electronic signature feature available in the DVBE Exemption Request [STD 816](https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std816.pdf).

When exempting the DVBE Incentive for an individual solicitation pursuant to a specific statutory exemption, the above procedures apply with the following exception to item (c):

Complete the DVBE Exemption Request form (STD 816) in sufficient detail to identify the statutory exemption in the “Exemption Justification” section of the form and obtain approval by the “Department designee completing the Std. 816”; approval by the “Highest ranking executive or designee” is not required.

**3. Legal Reference**

California Code of Regulations (CCR) Sections 1896.99.100

**4. Related Policy, Procedures, & Resources**

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**5. Attachments**

DVBE Exemption Request form ([STD 816](https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std816.pdf))

### 3.4.5 Incentive percentages

Competitive solicitations that include the DVBE participation requirement, regardless of solicitation format (RFQ, IFB, or RFP) delivery method or dollar value must identify in the solicitation the allowable incentive percentage(s) and how evaluation will occur. For awards based on low price, the allowable incentive percentage(s) identified in the solicitation cannot exceed 5% or be less than 1%. For awards based on high points, the incentive cannot exceed 5% or be less than 1% of total possible available points, not including points for socioeconomic incentives or preferences.

The following table pertains to awards based on low price. It is located in the DVBE Program Requirements packet and identifies the percentage(s) used to adjust the net bid price when calculating the DVBE incentive.

* **Confirmed DVBE Participation of** 5% and Over; DVBE Incentive equals 5%
* **Confirmed DVBE Participation of** 4% - 4.99% inclusive, DVBE Incentive equals 4%
* **Confirmed DVBE Participation of** 3% - 3.99% inclusive, DVBE Incentive equals 3%

Should the circumstances of a particular acquisition dictate the need, the packet provides a provision to override the table with another table that either depicts:

* A different scale with varying percentages (within the acceptable range) or
* Single incentive percentage (within the acceptable range)

If the table will be superseded, elsewhere within the solicitation identify the new table and state that it overrides the table in the DVBE Program Requirements. Obtain managerial approval and document the rationale for the change in the procurement file. Ensure that the incentive amount does not exceed 5% or $100,000, whichever is less, of the #1 ranked net bid price. When used in combination with a preference adjustment, the cumulative adjustment amount cannot exceed $100,000.

**Note:** Prior to a buyer including either of the above variances in the DVBE incentive requirements, the rationale for the change must be documented in the procurement file. The procurement file must also include signed approval for the variance by the department’s Procurement and Contracting Officer (PCO) or a designee at a managerial level with sufficient knowledge of the day-to-day procurement activities of the department. If the DGS Procurement Division is conducting the procurement for the department, a copy of the rationale for the change and the appropriate signed approval must be forwarded to PD with the department’s requisition.

### 3.4.6 Allowable maximum for low price awards

For each solicitation, the awarding departments’ highest ranking executive officer or his/her designee may elect to place a cap of not less than $100,000 on the incentive and/or cap of not less than $100,000 for all combined incentives and preferences. The department must document this approval in the procurement file.

### 3.4.7 Bidder declaration

Written solicitations shall include the Bidder Declaration (GSPD 05-105) to allow bidders to identify if they are a DVBE and identify DVBE subcontractors, their proposed contract function and the corresponding percentage of participation.

Click here to access the [Bidder Declaration, GSPD 05-105 – Written Version](https://www.dgs.ca.gov/-/media/BCC1D1997E83424FBF64148ECDF863C1.ashx)

When conducting a verbal solicitation, the Bidder Declaration,

GSPD 05-106 – Verbal Version and its respective instructions must be provided to the suppliers for completion and must be signed by the prime supplier.

Click here to access the [Bidder Declaration, GSPD 05-106 –Verbal Version](https://www.dgs.ca.gov/-/media/B6E607082C5942D1854BF6418A8577AB.ashx)..

### 3.4.8 Documenting the results (rev 12/11)

It is the responsibility of each department’s PCO or his/her designee to establish the appropriate protocol within his/her organization to ensure that buyers document the application of the DVBE incentive for the individual department’s reporting purposes.

When a department conducts an acquisition under its delegated purchasing authority, the [Procurement Summary](http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/gspd300.pdf) (GSPD-300) document or a similar document developed by the individual department will be used to document the application of the DVBE incentive. When conducting a formal competitive solicitation (RFP or IFB), the Evaluation and Selection Report format or Procurement Summary (or a similar document developed by the individual department), where appropriate, will be used. When award is based upon value effective methodology (also referred to as high score), the methodology used to determine incentive points must be documented in the procurement file.

If PD is conducting an IT procurement and the application of the DVBE incentive resulted in an award, a statement to that effect will be included in a contract cover letter. (See sample [contract cover letter](https://www.dgs.ca.gov/-/media/51800B9477A548B5B12F982DE6631E51.ashx)) Buyers who receive this information from PD will process the information according to the reporting protocol established by their department’s PCO.

### 3.4.9 When is the incentive calculated for low cost?

If included in the solicitation, the bidder must be compliant with the DVBE program requirements and responsive to all other requirements, including a Commercially Useful Function being performed by the DVBE(s). The incentive is only given to those who are responsive and propose DVBE participation in the resulting purchase document. When award is based on low price, the small business preference is applied first followed by the recycle preference. The DVBE incentive is calculated next with other preferences subsequently applied. However, for low cost awards, application of the DVBE incentive cannot displace award to a #1 ranked small business.

**Note:** The net bid price is the value of the bid excluding sales and use tax, finance charges, postage and handling charges. Shipping charges are also excluded from the net cost unless the shipping charge is included in the evaluation such as FOB Origin, Freight Collect or FOB Destination. The net bid price includes any evaluation corrections and applicable discounts.

### 3.4.10 How is the incentive calculated?

The following steps are taken to calculate the incentive. Since the percentage of participation can vary between bidders, and thus the incentive percentage can vary, the “calculated incentive amount” will need to be determined for each incentive percentage (see below).

Calculation Step 1:

Identify the bidder with the #1 ranked net bid price (the lowest responsive bid).

Calculation Step 2:

Based upon the evaluated DVBE participation percentage, determine the corresponding percentage of DVBE incentive for the bidder.

Calculation Step 3:

Multiply the #1 ranked net bid price by the DVBE incentive percentage to determine the “calculated incentive amount” for the bidder. Compare the “calculated incentive amount” to the incentive maximum (specified percentage or identified cap if any), and use the lower figure as the incentive amount.

Calculation Step 4:

Subtract the incentive amount from the net bid price of the bidder. If a preference calculation was performed, be sure that the allowable cumulative adjustment is not exceeded.

Calculation Step 5:

Repeat Steps (as needed) for each qualified bidder.

### 3.4.11 Low price awards

For purposes of the examples, bidders listed with a certified status are deemed eligible for the preference or incentive. DVBE = bidder is eligible for the DVBE incentive; SB = prime is a small business; MB = prime is a micro business; NVSA = prime is a small business nonprofit veteran service agency; NS = non-small business prime claiming preference due to qualifying subcontractors.

**Example – Incentive Calculation**

| Bidder: | A | B | C | D |
| --- | --- | --- | --- | --- |
| Responsive & responsible | Yes | Yes | Yes | No |
| Eligible preference | None | SB | MB | MB |
| Eligible DVBE incentive | None | 3% | 5% | None |
| Net bid price | $8100 | $8150 | $8300 | $8000 |
| Rank | 1\* | 2 | 3 | N/A |
| Preference amount |  | $ 405 | $ 405 | N/A |
| Subtotal |  | $7745 | $7895 |  |
| Rank | 3 | 1 | 2 | N/A |
| Incentive percentage |  | 3% | 5% |  |
| Incentive amount |  | $ 243 | $ 405 |  |
| Evaluated bid price | $8100 | $7502 | $7490 | --- |
| Final rank | 3 | 2 | 1 | N/A |

**Results:**

Following application of the SB preference the lowest responsive, responsible bidder is a certified small business (Bidder B).

However, both Bidder B and Bidder C are eligible to receive the DVBE incentive and since Bidder C is also a responsive and responsible SB, the incentive calculation is performed.

**Incentive Calculation:**

1. Identify the net bid price of the #1 ranked bidder (Bidder A at $8100).
2. Calculate the 5% SB preference for both Bidder B and Bidder C: $8100 X .05 = $405
3. Determine the corresponding percentage of DVBE incentive for the bidder; Bidder B has 3% DVBE participation so the incentive is 3%.
4. Determine the “calculated DVBE incentive amount” for
5. Bidder B by multiplying the #1 ranked bid amount by the incentive amount. ($8100 X .03 = $243). Compare it to the DVBE incentive maximum, if applicable, and use the lower figure.
6. Subtract the SB preference amount and the DVBE incentive amount from the net bid price of Bidder B:
7. $8150 - $405 - $243 = $7502.
8. Repeat steps for Bidder C. Determine the “calculated DVBE incentive amount by multiplying the #1 ranked bid amount by the incentive amount. ($8100 X .05 = 405). Subtract the SB preference amount and the DVBE incentive amount from the net bid of Bidder C: $8300 - $405 - $405 = $7490.

**Award:** The award is to Bidder C.

### 3.4.12 High point awards

The use of the DVBE incentive in solicitations where the award is based on high points requires that:

* The department only awards points to those bidders who have been determined responsible and are responsive to all solicitation requirements (including the DVBE program requirements, if applicable) and propose DVBE participation in the resulting purchase document.
* The department provides a rationale that explains how incentive points were determined for the solicitation. The incentive cannot exceed 5% or be less than 1% of total possible available points, not including points for socioeconomic incentives or preferences.
* The department includes incentive points in the sum of non-cost points. The incentive points cannot be used to achieve any applicable minimum point requirements.
* The department must identify how awarded points are to be tallied per the evaluation methodology identified within the solicitation.

When using the information technology IFB/RFP model, possible incentive points should be identified in Section IX.

The incentive percentage cannot exceed 5% or be less than 1% of total possible points. Departments may identify a scale with varying percentages (within the acceptable range) or a single incentive percentage (within the acceptable range) based on the business need of a particular transaction.

### 3.4.13 High point award example

The example below is provided to show how to determine whether the designated DVBE incentive points fall with the acceptable percentage range. The following provides an example of how points MAY be assigned for a solicitation. It does **not** represent, nor should be considered, the only approach that a customer may use for an award based on high points.

A solicitation has assigned 300 points as the maximum amount for administrative requirements and technical requirements (excludes the incentive). The cost points assigned total 300. The point designation reflects an evaluation methodology weight for cost of 50% where administrative and technical requirements (excluding any preferences and incentives) = 50% and cost = 50%.

The number of points established for the DVBE incentive correlated to participation is depicted using the scale below:

DVBE Incentive Points:

Confirmed DVBE Participation of 5% or Over; DVBE Incentive 30 points

Confirmed DVBE Participation of 4% to 4.99%; DVBE Incentive 24 points

Confirmed DVBE Participation of 3% to 3.99%; DVBE Incentive 18 points

Confirmed DVBE Participation of 2% to 2.99%; DVBE Incentive 12 points

Confirmed DVBE Participation of 1% to 1.99%; DVBE Incentive 6 points

Total possible points, excluding points for socioeconomic incentives or preferences, in this sample solicitation equal 600 with 5% representing 30 points, 1% representing 6. The acceptable point range of the DVBE incentive must fall within the 1% to 5% range (6-30 points). The DVBE incentive points in this sample meet this criterion.

## Topic 5 – Management of DVBE Contract Requirements

### 3.5.0 Compliance

The awarding agency shall establish a method of monitoring adherence to

the goals. Examples of monitoring methods include:

1. Random verification of contacts made, either for federal, state or local organization contacts, or for DVBE solicitations or bid consideration.
2. Review of multiple bids submitted by the same vendor to verify independent effort and documentation. Evidence of insincere efforts may include:

* Repeating unsuccessful contacts rather than trying a new contact.
* Use of contacts that are out of business.
* Business solicitations not relevant to the contract.
* Copying of identical DVBE documentation packages.

### 3.5.1 Post award audits

Awarding agencies must investigate and report program violations as follows

to the DGS/OSDS. The OSDS may suspend the violator and will forward the

investigative report to the Attorney General for possible action. It is unlawful for a person or firm to:

Knowingly and with intent to defraud, fraudulently obtain or retain certification as a DVBE. Willfully and knowingly make a false statement with the intent to defraud, to influence certification of any entity as a DVBE. Willfully and knowingly obstruct an investigation regarding DVBE certification. Knowingly and with intent to defraud, obtaining or attempting to obtain public moneys to which the person is not entitled under the DVBE Participation Program.

Knowingly and with intent to defraud, fraudulently represent DVBE participation in order to obtain or retain a bid preference or state contract.

Willfully and knowingly make a statement, declaration or other document, which is false as to any material matter.

Willfully and knowingly aid or assist in the preparation or presentation of a false document. Willfully and knowingly fail to file any declaration or notice required by M&VC Section 999.2.

Establish or cooperate in the establishment of, or exercise control over, a firm found to have violated the above. Violators are guilty of a misdemeanor and may also be liable for a civil penalty. Additionally, violators shall be suspended from bidding on, or participating as a contractor, subcontractor, or supplier in any state contract or project.

### 3.5.2 Prepare written report

Prior to reporting an alleged violation of PCC Section 10115.10 to the DGS/OSDS awarding agencies must investigate the alleged violation and must prepare a written report of their findings. The written report must also include a recommendation for action to be taken commensurate with the awarding agency's findings and must be submitted to the DGS/OSDS within 60 days of notification to the awarding agency of the alleged violation.

For contracts with DVBE goals, agencies should include the following language to assist in verifying compliance:

"Contractor agrees to provide verification, in a form agreed to by the state, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of award of contract, or with any subsequent amendment."

### 3.5.3 Prime Contractor’s Certification on DVBE Subcontractors and Payment Withhold *(NEW)*

**1. Policy**

This policy applies to all contracts as defined herein, regardless of acquisition type and method when a prime contractor commits to subcontracting with a DVBE subcontractor.

***Prime Contractor's Certification - DVBE Subcontracting Report***

Pursuant to Military and Veterans Code (MVC) Section 999.5(d), upon completion of an awarded contract for which a commitment to achieve a disabled veteran business enterprise (DVBE) goal was made, the state department must require the prime contractor that entered into a contract with one or more DVBE subcontractors to certify on the Prime Contractor's Certification - DVBE Subcontracting Report (STD 817) form the actual percentage and amount of DVBE participation that was achieved and that all payments under the contract have been made to DVBE subcontractors.

***Withhold and Payment Provisions***

Pursuant to MVC Section 999.7, state departments are required to withhold $10,000 from the final payment or the full payment if less than $10,000 until the prime contractor complies with the certification requirements of MVC Section 999.5(d). The withholding applies to all contracts regardless of acquisition type and method when a prime contractor commits to subcontracting with a DVBE subcontractor.

Notwithstanding any other law, state departments shall not withhold more than the required withhold amount on the final payment of any DVBE contract for the purposes of ensuring compliance with the certification requirements of MVC Section 999.5.

When developing solicitations and contracts that will allow contractors to subcontract with DVBEs, state departments should consider a statement of work and payment provisions that allow for more frequent deliverables and payments during the contract term. This consideration may aid the prime contractor to make payments to DVBE subcontractors thereby allowing the prime contractor to certify payments made to DVBE subcontractors at the conclusion of the contract.

For Leveraged Procurement Agreements (LPAs), DGS may prescribe alternative mechanisms for enforcing the certification requirement, and therefore, state departments must follow instructions provided in the User Instructions for each individual LPA.

***Notice to Cure and Permanent Deductions***

When a prime contractor fails to comply with the certification requirement in this section and a payment withhold is applied to a contract, the department shall allow the prime contractor to cure the deficiency after written notice. Notwithstanding any other law, if after at least 15 calendar days, but no more than 30 calendar days, from the date of the written notice the prime contractor refuses to comply with the certification requirements, the department shall permanently deduct $10,000 from the final payment, or the full payment if less than $10,000.

***Review Procedures and Record Retention***

Pursuant to MVC Section 999.55, state departments must establish appropriate review procedures for records related to the certification to ensure the accuracy and completeness of the award amounts and paid amounts reported.

State departments must maintain all records of the information provided by the prime contractor pursuant to MVC Section 999.5 and retain them for six years after collection.

State departments must report false information provided by a prime contractor on the Prime Contractor’s Certification – DVBE Subcontracting Report (STD 817) to the OSDS at: [sb.dvbecompliance@dgs.ca.gov](mailto:sb.dvbecompliance@dgs.ca.gov). A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of two thousand five hundred dollars ($2,500) and the maximum amount of twenty-five thousand dollars ($25,000).

***Partial Payment Dispute and Prompt Payment Considerations***

In general, a contractor does not have a right to the withheld amount and may not assert a Prompt Payment Act claim for failure to comply with the certification requirements. Additionally, if the prime contractor neversubmits the certification and the amount is permanently deducted, a contractor will have no claim under the Prompt Payment Act.

Partial payment of a final invoice requires a dispute notification for the amount withheld. See the State Administrative Manual (SAM) Chapter 8700, Section 8795, for guidance.

State departments should consult with their legal and accounting offices on harmonizing compliance with this policy and the prompt payment and disputes provisions of contracts.

***Definitions, Roles, and Responsibilities***

“Contract” is defined by MVC Section 999(b)(4) as including “any agreement or joint agreement to provide professional bond services to the State of California or an awarding department. “Contract” also includes any agreement or joint development agreement to provide labor, services, materials, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for, and on behalf of, the state.”

Consistent with the State Contracting Manual, this policy further clarifies a “contract” to include any acquisition type (information technology (IT) goods and services, non-IT goods, non-IT services, etc.) using any acquisition method (e.g., formal competitive, informal competitive, etc.) regardless of the contract form used to make the purchase (e.g., STD 213, STD 65, FI$Cal Purchase Order).

“Awarding department” is defined by MVC Section 999 (b)(2) to mean “a state agency, department, governmental entity, or other officer or entity empowered by law to issue bonds or enter into contracts on behalf of the state.”

This policy clarifies that an awarding department includes entities that purchase on behalf of other state departments such as the Procurement Division’s (PD) One Time Acquisition (OTA) Unit as it relates to awarding of contracts.

“Contract manager” is defined for the purposes of this section to mean state departments receiving the goods and services that are responsible for contract management which includes, but is not limited to, approving payments for goods and services received as well as withholding payments in accordance with MVC Section 999.7 and this policy/procedure.

The procedures noted below identify the roles and responsibilities of the awarding department and contract manager.

**2**. **Procedure**

For contracts awarded where a prime contractor has committed to achieve a DVBE participation goal, state departments are required to establish procedures that implement the policy and procedures noted herein. The procedures must include, at a minimum, the following elements:

|  |  |  |  |
| --- | --- | --- | --- |
|  | What | Who | When |
| 1 | Include the applicable DVBE Program Requirements in the solicitation (verbal or written) whenever the solicitation includes the DVBE participation requirements.  Departments may use the sample DVBE Program Requirements documents found here:   * [DVBE Program Requirements](https://www.dgs.ca.gov/-/media/Divisions/PD/OSDS/Certification/DVBE/DVBEProgramRequirements.pdf?la=en&hash=FBCA257A3ED083F3DBB85ECEEB37013CBCF0545C) * [DVBE Program Requirements – Goods and IT](https://www.dgs.ca.gov/-/media/Divisions/PD/OSDS/Certification/DVBE/DVBEIncentiveRequireGoodIT.pdf?la=en&hash=2032FF4DC210FE8B58DC069DBEB45542D48CEA9A) | Awarding Department | Solicitation development  before execution. |
| 2 | The awarded contract must include contract language and specific payment provisions to describe the requirements including the STD 817 certification form. See sample terms and conditions language and link to the prime contractor’s certification form on DVBE subcontractors’ payments:   * [Non-IT General Provisions](https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/Non-IT/NonITGeneralProvisions11192021.docx?la=en&hash=189A1CB74DC62190EDBE799A411B3B682B28DA23) * [IT General Provisions](https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/IT/ITGeneralProvisions11192021.docx?la=en&hash=1333CDCE673BA36829779048AF8B233AF70081BE) * [Cloud Computing – SaaS General Provisions](https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/CLOUDCOMPUTING_SaaSGP11192021.pdf?la=en&hash=13820BD4DA66DB6A8A17D19BC17BC66C724D5046) * *Prime Contractor’s Certification- DVBE Subcontracting Report* [*STD 817*](http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std817.pdf) | Awarding Department | Upon contract award. |
| 3 | The completed STD 817 is required to be submitted to the contract manager. | Prime Contractor | Upon completion of the contract, no later than final invoice. |
| 4 | Withhold $10,000, or full payment if less than $10,000, from a prime contractor’s final payment pending receipt of a complete and accurate STD 817.  Do not withhold more than  $10,000 for the purposes of ensuring compliance with the STD 817 certification requirement. | Contract Manager | Pending receipt of an accurate and complete STD 817. |
| 5 | Receive and review STD 817 for completeness and accuracy. | Contract Manager | Upon receipt but no later than 5 business days. |
| 6 | Authorize payment of the withhold upon review and determination that the STD 817 received is accurate and complete. | Contract Manager | Immediately. |
| 7 | If the STD 817 is received but is found by the department to be incomplete or inaccurate, or if the STD 817 is not received by the final invoice, the department must send the prime contractor a cure notice allowing at least 15 calendar days, but not more than 30 calendar days to meet the certification requirements.  The notice must inform the prime contractor of the consequence of a permanent deduction if the prime refuses to comply. | Contract Manager | Within 15 calendar days of either:  Receipt of an incomplete STD 817  Or  Final invoice wherein the STD 817 is not received |
| 8 | Permanently deduct the withheld amount when the prime contractor refuses to comply with the STD 817 requirement after given an opportunity to cure. | Contract Manager | No later than the 31st day from the cure notice. |
| 9 | The state department receiving the goods or services must retain in the procurement file all records related to the Prime Contractor’s Certification – DVBE Contract Report (STD 817) submittal. | Contract Manager | Minimum of six years from the receipt of the records. |

The Prime Contractor’s Certification – DVBE Subcontractor Report (STD 817) replaces the Prime Contractor DVBE Subcontracting Form (DGS PD 810P). Find the new Prime Contractor’s Certification – DVBE Subcontractor Report form ([STD 817](http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std817.pdf)) here: <http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std817.pdf>.

**3. Legal References**

Military and Veterans Code (MVC) Sections 999.5(d), 999.55, and 999.7

Public Contract Code (PCC) Section 10230

California Code of Regulations (CCR) Section 1896.78(e)

**4. Related Policy, Procedures, & Resources**

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**5. Attachments**

[Prime Contractor’s Certification – DVBE Subcontracting Report (STD 817)](http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std817.pdf)

[State Department’s Contractor DVBE Subcontracting Consolidation Report (DGS PD 810D)](http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd_810D.pdf)

[GSPD PD 401 Non-IT Commodities](https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/Non-IT/NonITGeneralProvisions11192021.docx?la=en&hash=189A1CB74DC62190EDBE799A411B3B682B28DA23)

[GSPD PD 401 IT Commodities](https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/IT/ITGeneralProvisions11192021.docx?la=en&hash=1333CDCE673BA36829779048AF8B233AF70081BE)

[Cloud Computing – SaaS General Provisions](https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/CLOUDCOMPUTING_SaaSGP11192021.pdf?la=en&hash=13820BD4DA66DB6A8A17D19BC17BC66C724D5046)

### 3.5.4 Substitution of sub-contractors

After award of a contract, the successful bidder/contractor shall use the DVBE subcontractors and/or suppliers proposed in the bid or proposal to the State unless a substitution is requested and approved. A prime contractor shall request the substitution in writing to the awarding department and must receive approval from both the awarding department and the DGS Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) in writing prior to the commencement of any work by the proposed DVBE subcontractor or supplier in order to replace a DVBE identified by the prime contractor in its bid with another DVBE pursuant to Military and Veterans Code Section 999.5 (g) and the DVBE Regulation Section 1896.73.

### 3.5.5 Situations allowing substitution of sub-contractors

The California Code of Regulations (CCR), Title II section 1896.73 provides the current requirements for awarding departments to approve the substitution of a DVBE subcontractor.  Departments shall follow the process set forth in 2 CCR section1896.73 when a prime contractor requests the substitution of a DVBE subcontractor with the added provisions that:

* Only another DVBE subcontractor shall be considered to replace a DVBE subcontractor, and
* The awarding department shall obtain final approval to replace a DVBE subcontractor from the DGS.

### 3.5.6 Required language in solicitations

To ensure prime contractors honor their commitments to use DVBE subcontractors and meet the commitment levels identified in bids, departments must include language in solicitations and contracts that highlight legal requirements.

The following suggested or similar language shall be incorporated into solicitations and resulting contracts:

Contractor understands and agrees to comply with the requirements set forth in Military and Veterans Code Section 999 et seq. that should award of this contract be based in part on their commitment to use the Disabled Veteran Business Enterprise (DVBE) subcontractor(s) identified in their bid or offer, per Military and Veterans Code section 999.5 (g), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by both the awarding department and the Department of General Services (DGS) prior to the commencement of any work by the proposed subcontractor.  Changes to the scope of work that impact the DVBE subcontractor(s) identified in the bid or offer and approved DVBE substitutions will be documented by contract amendment.

Failure of Contractor to seek substitution and adhere to the DVBE participation level identified in the bid or offer may be cause for contract termination, recovery of damages under rights and remedies due to the State, and penalties as outlined in MVC Section 999.9; Public Contract Code (PCC) Section 10115.10.

When general provisions are not used, every contract that contains DVBE subcontractor participation shall include a provision requiring the prime contractor to comply with the DVBE subcontractor reporting requirements of MVC 999.5(d) and Public Contract Code Section 10230. The following suggested or similar language shall be incorporated into solicitations and resulting contracts:

Upon completion of this Contract, the department requires the Contractor to certify using the Prime Contractor’s Certification – DVBE Subcontracting Report (STD 817), all of the following:

(1) the total amount the prime Contractor received under the Contract;

(2) the name, address, Contract number and certification ID number of the DVBE(s) that participated in the performance of this Contract;

(3) the amount and percentage of work the prime Contractor committed to provide to one or more DVBE(s) under the requirements of the Contract and the total payment each DVBE received from the prime Contractor;

(4) that all payments under the Contract have been made to the DVBE(s); and

(5) the actual percentage of DVBE participation that was achieved. Upon request, the prime Contractor shall provide proof of payment for the work.

If for this Contract the Contractor made a commitment to achieve the DVBE participation goal, the Department will withhold $10,000 from the final payment, or the full final payment if less than $10,000, until the Contractor complies with the certification requirements above. A Contractor that fails to comply with the certification requirement shall, after written notice, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days but not more than 30 calendar days from the date of written notice, the prime contractor refuses to comply with the certification requirements, the department shall permanently deduct $10,000 from the final payment, or the full payment if less than $10,000. (Mil. & Vets. Code § 999.7)

A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841)

Contractor agrees to comply with the rules, regulations, ordinances, and statutes that apply to the DVBE program as defined in Section 999 of the Mil. & Vets. Code, including, but not limited to, the requirements of Section 999.5(d). (PCC Code § 10230)

### 3.5.7 Written request to DGS

Requests to replace a DVBE subcontractor must be documented to show that the replacement meets the criteria as specified in the CCR or the PCC.  Documentation may include, but is not limited to the request, confirmation of receipt of the request, the subcontractor's objection and request for hearing and the final Statement of Decision.  Requests and resulting amendments generated by the DVBE subcontractor substitution should be timely so as not to unreasonably delay the contractor’s performance of the contract, resulting in potential claims against the awarding department for delay damages.

Requests are to be sent electronically to [osdshelp@dgs.ca.gov](mailto:osdshelp@dgs.ca.gov).  Click on the following link to access the “DVBE Substitution” Form and Instructions: [DVBE Substitution Form and Instructions](https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/File-a-DVBE-Substitution-Report).

## Topic 6 – Small Business Preference and Competitive Solicitations

### 3.6.0 Preference amount

A five percent (5%) preference shall be offered to California certified SBs when a competitive solicitation is being conducted. The SB preference applies for competitive solicitations regardless of the solicitation format (e.g., RFQ, IFB, RFP) or dollar value with few exceptions.

Exception**:**

The SB preference is not applicable when:

* Using the SB/DVBE Option as the acquisition method

### 3.6.1 Applying the preference

1. If SB preference is claimed, it shall be 5% of the net bid price of the lowest responsible bidder meeting specifications. Also see Topic 2 of this chapter for CUF requirements.   
   **Note:** The net bid price is the value of the bid excluding sales and use tax, finance charges, postage and handling charges. Shipping charges are also excluded from the net cost unless the shipping charge is included in the evaluation such as FOB Origin, Freight Collect or FOB Destination. The net bid price includes any evaluation corrections and applicable discounts.
2. Subtract this amount from all qualifying bids
3. If no other preferences or the DVBE incentive are applicable, re-rank bids to determine which bidder has the low responsive bid. Award is made to the #1 ranked bid. **Note:** Applying the SB preference formula is for evaluation purposes only and does not change the actual bids offered by any suppliers.
4. Document the procurement file in sufficient detail to support the award. Documenting the file includes recording the SB preference calculations.  
   **Example:**

Supplier A – Bidder does not qualify for the SB preference: Multiply the low net bid price by preference factor ($12,500 x .05 = $625)

Supplier B – Certified SB: Subtracted the preference adjustment from the net bid price ($13,000 - $625 = $12,375)

**Results**: Since $12,375 is less than $12,500 the award was made to the certified SB (assuming all other conditions of the solicitation were met).

### 3.6.2 Awards based on high point

Small business preference calculation is performed for awards based on high points.

To apply the preference:

1. Identify the bidder with the #1 ranked bid (the responsive bid with the highest total score.
2. Multiply the total score of the #1 ranked bid by five (5%) to determine the preference amount (per GC section 14838(b)(2)).
3. Add the preference amount to the total score of responsive bids eligible to receive the preference.

The following are examples based on a value effective IT solicitation where only the SB preference was claimed by bidders and a two-envelope method was used.

**Preference Calculation**

Bidder A Bidder B Bidder C Bidder D

Responsive and responsible Yes Yes Yes No

Eligible preference None None SB MB

Combined administrative & 400 450 450 550

Technical score

Score based on price bid 1200 1140 1100 n/a

Total score 1600 1590 1550 --

Rank 1 2 3 n/a

Preference amount 80

Final score 1600 1590 1630 --

Final rank 2 3 1 n/a

The preference calculation is performed as follows:

1. Identify the total score of the #1 ranked bidder (Bidder A at 1600).
2. Determine the preference amount (1600 X .05 = 80).
3. Add the preference amount to the total score of bids eligible to receive the preference (Bidder C: 1,550 + 80 = 1,630).

The award is to Bidder C.

### 3.6.3 Maximum preference allowed for low price awards

For awards based on low price, the maximum bid preference allowed individually may not exceed $50,000 for any bid, and the combined cost of preferences granted may not exceed $100,000.00 total. In combination with any other preferences (TACPA, SB, non-SB subcontracting participation, recycled, etc), the maximum limit of the combined preferences is 15% of the bid amount and, in no case, more than $100,000.00 per bid, whichever is less.

### Tie between suppliers

In the event of a precise tie between the bid of a certified SB and the bid of a certified DVBE that is also a SB, the award shall go to the DVBE that is also a SB. (Reference GC section 14838 (f).Note: Only the recycle preference\* can preclude award to a small business that is either ranked #1 or moves into the #1 rank following application of the small business preference. However, one small business can displace another small business for award as a result of application of other preferences and/or the DVBE incentive.

\*The recycle preference when award is based on low cost is limited to $50,000 if its application would preclude award to a small business.

### SB reporting

Refer to Chapter 12, Reporting Requirements for SB participation reporting requirements.

## Topic 7 – Non-Small Business Subcontractor Preference and Competitive Solicitations

### 3.7.0 Preference amount

A five percent (5%) preference shall be offered to a non-small business (non-SB) that commits to subcontract at least 25 percent (25%) of its net bid price to a California certified SB(s) per GC section 14838(b). SB and MB bidders shall have precedence over non-SB bidders in that application of the preference for which a non-SB bidder may be eligible shall not result in the denial of the award to a SB or MB bidder, per GC section 14838(f).

**Exception**: The non-SB preference is not applicable when the solicitation is being conducted using the “SB/DVBE Option” acquisition method. See Chapter 4 – Competitive Solicitations for detailed information regarding the SB/DVBE Option process and fair and reasonable pricing and evaluation.

### 3.7.1 Documenting the commitment

An non-SB claiming 25 percent (25%) California certified SB subcontractor participation must identify applicable subcontractor information in their bid response to support the subcontracting claim:

* Subcontractor name(s)
* Subcontractor address(es)
* Subcontractor phone number(s)
* A description of the work to be performed and/or the products supplied and,
* The dollar amount or percentage of the net bid price (as specified in the solicitation) per subcontractor

Completion of the Bidder Declaration serves this purpose.

**Note**: Each listed California certified SB must perform a ”Commercially Useful Function” in performance of the contract as defined in GC section 14837(d)(4).

### 3.7.2 Required solicitation language

Buyers must include non-SB preference language in all written solicitations, except those solicitations conducted as a “SB/DVBE Option” acquisition method.

When applying the non-SB preference to a solicitation that is not written, the same concepts required for a written solicitation must be applied and the appropriate documentation must be retained in the procurement file.

### 3.7.3 Award based on low price

The following is an example of applying the non-SB preference to determine the successful bidder when award is based on low price.

**Bid After Applying**

**Bidder Net Bid Price SB Preference Status of Bidder**

A $19,870 $18,894 Non-SB subcontractor preference (commits to 25% certified SB participation)

B $19,975 $19,975 Does not claim to be SB and does not claim non-SB subcontractor participation.

C $19,520 $19,520 Does not claim to be SB and does not claim non-SB subcontractor participation.

1. Calculate 5% of the net bid price of the lowest responsible and responsive bid. In this example Bidder C is the lowest responsive bid.   
   Bidder C: Multiply net bid price by the preference factor ($19,520 x .05 = $976). $976 is the preference value to be applied for evaluation purposes to non-SB and SB.
2. Subtract the preference value from the bid amount of Bidder A claiming non-SB subcontractor preference.   
   **Note:** Applying the SB preference formula is for evaluation purposes only and does not change the actual bids offered by any suppliers.
3. Apply the results of No. 2 above as follows:

Bidder A (non-SB claiming subcontractor preference): Subtract preference value amount from the net bid price of Bidder A.  
($19,870 - $976 = $18,894)  
**Results:** Since $18,894 is less than $19,520 the award is made to Bidder A.

1. Document the procurement file in sufficient detail to support the award. This includes recording the non-SB preference calculations.  
   **Note**: In the case above, if Bidder C was a SB, a preference would not be calculated since a SB that is already ranked #1 cannot be displaced for award due to application of the SB preference.

### 3.7.4 Award based on high point awards

Small business preference calculation is performed for awards based on high points. To apply the preference:

1. Identify the bidder with the #1 ranked bid (the responsive bid with the highest total score
2. Multiply the total score of the #1 ranked bid by five (5%) to determine the preference amount (per GC section 14838(b)).
3. Add the preference amount to the total score of responsive bids eligible to receive the preference.
4. Identify the total score of the #1 ranked bidder (Bidder A at 1600).
5. Determine the preference amount (1600 X .05 = 80).
6. Add the preference amount to the total score of bids eligible to receive the preference (Bidder C: 1,550 + 80 = 1,630).

*Example:*

|  | Bidder A | Bidder B | Bidder C | Bidder D |
| --- | --- | --- | --- | --- |
| Responsive and responsible | Yes | Yes | Yes | No |
| Eligible preference | None | None | SB | MB |
| Combined administrative & Technical score | 400 | 450 | 450 | -- |
| Score based on price bid | 1200 | 1140 | 1100 | n/a |
| Total score | 1600 | 1590 | 1550 | -- |
| Rank | 1 | 2 | 3 | n/a |
| Preference amount | -- | -- | 80 | -- |
| Final score | 1600 | 1590 | 1630 | -- |
| Final rank | 2 | 3 | 1 | n/a |

The award is to Bidder C.

### 3.7.5 Ties between suppliers claiming preferences

In the event of a precise tie between a California certified SB bid and a non-SB subcontracting with California certified SB, the award will be made to the California certified SB.

In the event of a precise tie between a certified SB bid and a certified DVBE/SB bid, the award will be made to the certified DVBE/SB.

### 3.7.6 Maximum preference allowed for low price awards

For awards based on low price, the maximum bid preference allowed individually may not exceed $50,000 for any bid. In combination with any other preferences (TACPA, SB, non-SB subcontracting participation, recycled, etc.), the maximum limit of the combined preferences is 15% of the bid amount or $100,000.00 whichever is less.

### 3.7.7 SB reporting

Refer to Chapter 12, Reporting Requirements, for SB participation reporting requirements.

### 

## Topic 8 – Small Business/Nonprofit Veteran Service Agencies and Competitive Solicitations

### 3.8.0 Preference amount

Nonprofit veteran service agencies (NVSA) that have been California certified as a small business nonprofit veteran service agency are eligible to claim the five percent (5%) SB preference when responding to competitive solicitations.

### 3.8.1 Eligibility

NVSA suppliers will be designated as NVSA certified and identified on the OSDS website

### 3.8.2 Verifying certification status

California NVSA certification status can be verified by accessing the SB and DVBE Services certified firm inquiry database located on the DGS/PD web page.

The database printout in support of the NVSA must be maintained in the procurement file.

Click here to access the [SB and DVBE Services web page](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Office-of-Small-Business-and-Disabled-Veteran-Business-Enterprise/Certification-Program).

### 3.8.3 Applying the preference for awards based on low price

The application of the SB preference is only allowed when an NVSA is acting as the prime bidder. To apply the preference:

1. If the NVSA is claiming an SB preference, it shall be 5% of the lowest responsible bidder meeting specifications.

**Note:** “Net bid price of the bid that does not qualify for the SB preference” is the value of the offer excluding sales and use tax, finance charges, postage and handling charges. Shipping charges are also excluded from the net cost unless the shipping charge is included in the evaluation such as FOB Origin, Freight Collect or FOB Destination. The net bid price includes any evaluation corrections and applicable discounts.

1. Subtract this amount from all qualifying bids.
2. If no other preferences or the NVSA are applicable, re-rank bids to determine which bidder has the low responsive bid.

**Note:** Applying the SB preference formula is for evaluation purposes only and does not change the actual bids offered by any suppliers.

Documenting the file includes recording the SB preference calculations.

**Example:**  
Bidder A – Business that does not quality for SB preference: Multiplied low net bid price by the preference factor.  
($12,500 x .05 = $625)  
  
Bidder B – Certified SB: Subtract $625 from the net bid price.  
($13,000 - $625 = $12,375)  
  
Results: Since $12,375 is less than $12,500 the award is made to the certified SB (assuming all other conditions of the solicitation were met).

### 3.8.4 SB/DVBE option

A California certified NVSA may be solicited when conducting a SB/DVBE Option solicitation in accordance with GC section 14838.5 (a). For additional information on the SB/DVBE Option, see Chapter 4.

### 3.8.5 Notification of ineligibility

In order to maintain NVSA certification a NVSA is required to provide social security, unemployment and disability benefits for its employees. In the event that the NVSA ceases to be compliant with these requirements, any existing contract awarded as a result of the application of the SB preference must be terminated and the NVSA will be ineligible to contract with the State for two (2) years.

Notification of ineligibility will be disseminated to departments through the DGS/PD broadcast bulletins and the information posted to the OSDS website.

Click here to access the [DVBE and Small Business Program Violations and Sanctions web page](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/SB-DVBE-Program-Violations-and-Sanctions).

### 3.8.6 NVSA reporting

Contract awards to NVSAs shall be separately identified and included with the count of total SB participation as part of the annual reporting requirements.

Refer to Chapter 12 for SB reporting requirements.

## Topic 9 –TACPA Competitive Solicitations

### 3.9.0 TACPA preference

The Target Area Contract Preference Act (TACPA) preference program attachment shall be included with IT competitive solicitations valued at $100,000 and greater:

The TACPA preference only applies to California based firms that demonstrate and certify under penalty of perjury that at least 50% of the total labor hours for manufactured goods or 90% of the total labor hours for services will be performed in distressed areas.

* Bidders may also apply for additional work force preference of one to four percent if the bidder agrees to hire certain identified persons equal to a percentage of its work force during the contract performance period (See GC sections 4534.1, 7084(c), and 7118(c).)

### 3.9.1 Dollar value to include language and preference forms

The DGS/PD buyers shall include preference attachments with all competitive solicitations valued at $85,000 and greater. For departments with purchasing authority, the DGS/PD strongly recommends that the preference forms be included in all IT competitive solicitations valued at $85,000 and greater. If the low responsive bid received from a responsible supplier is $100,000 or more, and the preference requirements were not included in the solicitation, the solicitation must be canceled and re-issued.

### 3.9.2 TACPA solicitation language

Departments shall include language that identifies to bidders that the TACPA preference is applicable to the competitive solicitation. Recommended solicitation language is as follows:

The TACPA preference will be granted for this procurement. Bidders wishing to take advantage of this preference will need to review the following the [TACPA website](https://www.dgs.ca.gov/-/media/9AA853B62DF648CCBCD3EF32D10293CC.ashx) at http://www.documents.dgs.ca.gov/pd/poliproc/tacpapage.pdf and submit the appropriate response with the bid.

Bidders wishing to take advantage of these preferences are required to submit the following applications/forms:

* TACPA (Std. 830)
* Bidder’s Summary of Contract Activities and Labor Hours (DGS/PD 525
* Manufacturer Summary of Contract Activities and Labor Hours (DGS/PD 526).

### 3.9.3 Program description

An overview of the TACPA preference program is provided below:

* TACPA
* Pursuant to GC section 4530 – 4535.3
* Encourages and facilitates job maintenance and job development in distressed and declining areas found in California cities and towns.

Click here to access the [TACPA preference request (STD.830)](http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std830.pdf).

Click here to obtain information on [Census Track and Block Group Number](http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml).

Contracts excluded from this Preference Program include construction contracts and contracts with designated worksite.

### 3.9.4 Preference procedures

The DGS, Procurement Division reviews all TACPA applications. Departments must submit the following to the DGS, Preference Unit for review:

* Copies of the TACPA (STD. 830), application
* Bidder's Summary of Contract Activities and Labor Hours (goods and services)
* Manufacturer's Summary of Contract Activities and Labor Hours (goods)
* Copy of Solicitation
* Delivery Schedule (if applicable)

Preference requests are reviewed and processed within 5 working days and a recommendation memo (approval/denial) will be faxed to the originating department’s contract analyst.

After receipt of the recommendation memo, the contract analyst must notify the Preference Unit if an award is made based on the approved preference points. The Preference Unit monitors the contract for compliance. Non-compliance contract performance has the following consequences:

1. Pay to the state any difference between the contract amount and what the state’s cost would have been if the contract had been properly awarded;
2. In addition to the amount specified in (A) above, be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved; and
3. Be ineligible to directly or indirectly transact any business with the state for a period of not less than six months and not more than 36 months.

**Note:** Prior to the imposition of any sanction under this chapter, the contractor or vendor shall be entitled to a public hearing and to five days notice of the time and place thereof. The notice shall state the reasons for the hearing.

### 3.9.5 Maximum preference allowed for low price awards

The maximum preference allowed for TACPA is 9 percent of the bid amount but may not exceed $50,000 for any bid. In combination with any other preference (TACPA, SB, non-SB subcontracting participation, recycled, etc.), the maximum limit of the combined preference is 15 percent of the bid amount and, in no case, shall be more than $100,000.00 per bid, whichever is less.

### 3.9.6 Sample participation worksheet

Sample participation worksheet for departments with purchasing authority:

Click here to access the Participation Worksheet revised 12/05/07.

Click here to access the Participation Worksheet Instructions revised 12/2007.

The use of this form is required for the DGS/PD, but optional (to be used as an example of how participation data can be collected) for departments with purchasing authority.

### 3.9.7 Preference program contact and information

The DGS/PD/Dispute Resolution and Preference Program administer the bid preference programs.

Click here to access the [Dispute Resolution and Preference Program web page](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Policy-Training-and-Customer-Service/Dispute-Resolution-Unit).

## Topic 10 – State Agency Buy Recycled Campaign (SABRC) Program

### 3.10.0 Using recycled content products

Public Contract Code (PCC) section 12203 requires departments to utilize recycled content products (RCP). A minimum of 50 percent of funds expended in each of the targeted categories must be products meeting the requirements of an RCP. The required RCP varies by SABRC product category.

### 3.10.1 Department Recycled Content Product purchasing requirements

The State of California promotes the procurement of sustainable and recycled content products. Departments shall ensure that the responsibility for SABRC is shared among procurement personnel, managers, buyers, contract specialists, contractors, suppliers and all others who procure goods and services for the State.

Departments will consider RCP in conducting its purchasing activities. All departments are required to comply with the RCP requirements of the State Agency Buy Recycled Campaign contained in PCC Sections 12200-12217.

The SABRC reportable categories and requirements are located on the [CalRecycle website](http://www.calrecycle.ca.gov/BuyRecycled/StateAgency/) at http://www.calrecycle.ca.gov/BuyRecycled/StateAgency/

### 3.10.2 Recycle preference and competitive solicitations

Pursuant to PCC section 12203 (d), to the maximum extent economically feasible in performance of the contract work, each department shall require the businesses with whom it contracts to use recycled content products. Contact the Department of Resources Recycling and Recovery (CalRecycle) at (916) 341-6199 or [SABRC@CalRecycle.ca.gov](mailto:SABRC@CalRecycle.ca.gov) for information on qualifying SABRC reusable and recycled content products.

### 3.10.3 Non-compliant trash bag manufacturers and wholesalers

Pursuant to Public Resources Code 42297 (c) (1) and (2), any plastic trash bag supplier, manufacturer or wholesaler, or any of its divisions, subsidiaries, or successors, is ineligible for any State contract or subcontract or renewal, extension or modification of any State contract, if it is not in compliance with the certification requirements of the law. To be compliant, manufacturers must meet either one of the following options:

* Ensure that its plastic trash bags contain a quantity of recycled plastic postconsumer material (RPPCM) equal to at least 10 percent of the weight of the regulated bags.
* Ensure that at least 30 percent of the weight of material used in all of its plastic products intended for sale in California is RPPCM.
* Ensure that its plastic trash bag is labeled as biodegradable or compostable and meets ASTM D6400 standard for Compostable Plastics.

Manufacturers and wholesalers who are non-compliant with the Plastic Trash Bag Law cannot contract with the State regardless of the product being provided in the contract (i.e. plastic trash bags, janitorial supplies or services, or any other products or services). Additional information, including a listing of compliant and noncompliant trash bag manufacturers and wholesalers is available on the [CalRecycle website](http://www.calrecycle.ca.gov/BuyRecycled/TrashBags/ComplyList/) at http://www.calrecycle.ca.gov/BuyRecycled/TrashBags/ComplyList/.

### 3.10.4 Supplier certification

Pursuant to PCC section 12205, all purchases of products in the targeted categories must include a written certification by the business/supplier, under penalty of perjury as to the recycled content percentage. The supplier may certify that the product or material contains zero recycled content.

Click here to access the Post-Consumer [Recycled-Content Certification form (CIWMB 74)](https://www.calrecycle.ca.gov/docs/cr/buyrecycled/stateagency/Forms/CalRecycle074.pdf).

This certification can be waived if the post-consumer recycled content can be verified by other written means such as product label, packaging, catalog, manufacturer/vendor website, product advertisement.

For additional information contact CalRecycle at (916) 341-6199 or SABRC@CalRecycle.ca.gov.

### 3.10.5 Tire Recycle Preference

Per Public Resources Code (PRC) section 42890 et seq., a 5 percent (5%) recycle preference is available for recycled tire products (also known as tire-derived products). Recycled tire products are reportable for SABRC and purchases are SABRC compliant if they contain at least 50 percent recycled used tires.

### 3.10.6 Tire Preference evaluation

When evaluating bids, application of the recycle preference is only applicable if both virgin products and recycled content products (RCP) are acceptable for a line item and the products bid are similar. Should only recycled content products be bid, then the preference is not calculated.

Should a solicitation include a mix of line items containing both qualified and non-qualified tire-derived RCPs, the preference shall only apply to qualified line items. If line item awards are made, the preference shall be applied, to the extent possible, so as to maximize award to bidders proposing recycled tire products (PRC section 42892).

**Note**: Virgin products refer to products not qualified as a recycled product.

### 3.10.7 Tire Preference calculation

The following pertains to recycle preference calculation for awards based on low price. Only responsive bids from responsible bidders are eligible for the preference.

1. The recycle preference is calculated subsequent to price adjustment for the small business preference and prior to application of the DVBE incentive.
2. The 5 percent preference is calculated against the net bid price of the lowest responsive bid proposing a virgin product and subtracted from eligible bids proposing recycle content products.
3. The preference amount cannot exceed $100,000.
4. The preference cannot exceed $50,000 if its application would preclude award to a small business.
5. Should a bidder be eligible for a recycle preference in addition to another preference(s) and/or the DVBE incentive, the cumulative adjustment is the lower of 15 percent or $100,000.

### 3.10.8 Tie bids

Where the fitness and quality of proposed products in tie bids is equal, award shall be made to the bidder proposing the greater percentage of recycled tire content (PRC section 42894).

### 3.10.9 Reportable purchases

The reportable product category applicable to IT goods would be plastics products including printer or duplication cartridges that:

* Plastic Products that are 10 percent (10%) postconsumer, by weight
* Printer or duplication cartridges that:
  + Have 10 percent (10%) postconsumer material, or
  + Are purchased as remanufactured, or
  + Are backed by a vendor-offered program that will take back the printer cartridges after their useful life and ensure that the cartridges are recycled and comply with the definition of recycled as set forth in PCC section 12156

**Note**: Pursuant to PCC section 12156 no State department shall purchase any printer or duplication cartridge for which the manufacturer, wholesaler, distributor, retailer, or remanufacturer places restrictions on the recycling or remanufacturing of that cartridge by any other person. For purposes of this section, these restrictions include, but are not limited to, all of the following:

* Reducing the price of the cartridge in exchange for any agreement not to remanufacture the cartridge.
* A licensing agreement on the cartridge that forbids remanufacturing.
* Any **contract** that forbids the remanufacturing or recycling of the cartridge.

Notwithstanding the above a manufacturer, wholesaler, distributor, retailer, or remanufacturer who establishes a recycling or remanufacturing program that is available to its customers may enter into signed agreements with those customers consenting to the return of the used cartridge to the manufacturer, wholesaler, distributor, retailer, or remanufacturer, only for either of the following purposes:

* Recycling and remanufacturing, for purposes of making the remanufactured cartridge available for purchase.
* Recycling.

### 3.10.10 Reporting

All departments must comply with PCC Section 12211(a), which requires State agencies to report annually to CalRecycle the results of their RCP purchases within specific categories of material types.

Refer to Chapter 12- Reporting Requirements for further information on reporting RCP.

## Topic 11 – Environmentally Preferable Purchasing (aka: Sustainability or Buy Green

### 3.11.0 Definition

"Environmentally preferable purchasing" as defined in PCC section 12400 means the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose.

This comparison shall take into consideration, to the extent feasible, raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, disposal, energy efficiency, product performance, durability, safety, the needs of the purchaser, and cost.

### 3.11.1 Policy

State Departments are to consider the health and environmental impacts of goods and services in all their procurements and acquisitions and, comply with the Environmentally Preferable Purchasing (EPP) Act as mandated by PCC sections 12400-12404.

When purchasing IT equipment, departments shall follow the Low Power Office Computing policy outlined in Technology Letter (TL) 12-3. Click here to access TL [12-3](https://cdt.ca.gov/wp-content/uploads/2017/03/TL_12-3_Low_Power_Supersession_Final.pdf).

### 3.11.2 Department Environmentally Preferable Purchasing requirements

The State of California promotes the procurement of sustainable products that are designed to reduce adverse impacts to the environment and human health. Departments shall consider all health and environmental factors as early as possible in their acquisition planning and decision-making processes.

Pursuant to Executive Order B-18-12, departments shall purchase and use environmentally preferable products when compared with competing goods that serve the same purpose, whenever applicable, perform well, and are cost-effective. When available, departments are required to purchase commodities that meet DGS Purchasing Standards on the [DGS Buying Green website](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Buy-Clean-California-Act#@ViewBag.JumpTo).

Departments are required to purchase Energy Star products (e.g., PC goods and multi-functional devices), when available, in accordance with current DGS statewide contract EPP specifications.

Access the [DGS Buying Green Guide](https://www.dgs.ca.gov/PD/Resources/Find-EPP-Goods-and-Services) at https://www.dgs.ca.gov/PD/Resources/Find-EPP-Goods-and-Services

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### 3.11.3 EPP best practices

The DGS EPP Buying Green Guide provides best practices, guidelines and specifications including third party certification requirements and procedures for the comparison of the overall values of goods or services. Departments should use the EPP Buying Green Guide to assist procurement staff in making environmentally preferable purchases.

Click here to access the [California Environmentally Preferable Purchasing Web](https://www.dgs.ca.gov/PD/Resources/Find-EPP-Goods-and-Services) page for the [EPP Buying Green Guide](https://www.dgs.ca.gov/PD/Resources/Find-EPP-Goods-and-Services)